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# Supreme Court of the United States

OCTOBER TERM, 1948

No. 505

ANTONIO CORRADO,

*Libelant-Appellee,*

*—against—*

PENNSYLVANIA RAILROAD COMPANY,

*Respondent-Appellant.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF


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# Supreme Court of the United States

OCTOBER TERM, 1948

No. .....

ANTONIO CORRADO,
*Libelant-Appellee,*

*—against—*

PENNSYLVANIA RAILROAD COMPANY,
*Respondent-Appellant.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioner, the Pennsylvania Railroad Company, a corporation organized and existing by virtue of the laws of the State of Pennsylvania, respondent-appellant, above named, respectfully prays that this Honorable Court in the exercise of its supervisory powers issue a writ of certiorari in this action to the United States Court of Appeals for the Second Circuit, to the end that this Honorable Court may review the final decree and the decision of that court, made and entered in this action on November 29, 1948, whereby said Court affirmed the final decree in admiralty of the United States District Court, Eastern District of New York, made and entered in the action on May 21, 1948, wherein it was

adjudged that Antonio Corrado, libelant-appellee, above named, have and recover of your petitioner the sum of $18,817.75.

## The Facts

The decree affirmed by the Court of Appeals in this case was entered in the action following a trial in the District Court of the issues created by the pleadings. The action was a libel in personam and was instituted by libelant against petitioner for the purpose of compelling petitioner by judicial process to pay him a sum of money in the amount of $50,000.00, or such part thereof as the Court might direct, to indemnify him in full for personal injuries he had sustained under circumstances which, as he asserted, rendered petitioner liable to him.

The libelant, as it appears from the pleadings and the evidence in the case, was accidentally injured while he was aboard a car float (a vessel as defined in 1 United States Code, Sec. 3 and R. S. 3) owned by petitioner. The vessel, a few hours before the accident, had been loaded with cargo, consisting of ten freight cars containing merchandise, at Jersey City, New Jersey. Thereafter, the float with her cargo was transported across the Hudson River by the use of one of petitioner's tug boats and then was moored to Pier 29, location of which was near the foot of Desbrosses Street, New York, New York. Shortly after the mooring had been made, petitioner, in accordance with a contract previously entered into, surrendered possession of the float to a stevedoring contractor, the Penn Stevedoring Company, libelant's employer, for the purpose of having the merchandise unloaded from the freight cars as they stood on the float to a platform on the float and thence to the adjoining pier.

Libelant, along with three of his fellow-workers, was assigned by his employer the task of unloading one of the freight cars of the merchandise therein and depositing it on the pier. After libelant and his fellow-employees had been at their task for about an hour, someone, whose identity is not revealed, told libelant to open the door on the offshore side of the car in order to obtain more light and better circulation of air in the car. Accordingly, libelant went outside of the car to open the door and as he was breaking the seal on the lock of the door, he observed that the top of the door bulged out from the side of the car about an inch. After he had broken the seal and removed an iron pin from the lock, he took hold of a handle located near the middle of the door and began pulling on the door to slide it open. When he had moved it about two inches the door toppled over and fell upon him causing him to sustain personal injuries.

Petitioner made no point in either of the Courts below as to the nature and extent of libelant's injuries and, accordingly, makes no point of them in this petition.

## The Decisions of the Courts Below

The District Court decided that libelant was entitled to indemnity in full, without mitigation, for the personal injuries sustained by him upon grounds as follows: First, that such injuries had been caused by unseaworthiness of the vessel. Second, that such injuries had also been caused by negligence for which petitioner was responsible. Third, that such injuries had been caused without any contributory negligence on the part of libelant. The Court of Appeals, upon the appeal, sustained the decision of the District Court as to the second and third of the foregoing grounds but declined to sustain the decision as to the first.

## Jurisdiction

This Honorable Court now has the power of unrestricted review of cases in the Court of Appeals either before or after rendition of judgment or decree, brought up on certiorari (28 United States Code, Sec. 1254(1), effective September 1, 1948).

## The Question Presented

The question of Federal law here presented is as follows:

> Can a stevedore who has accidentally sustained personal injuries on board a vessel in navigable waters in the performance of his work, under circumstances involving no unseaworthiness of the vessel or her appliances, lawfully obtain indemnity from the owner of the vessel upon the ground that such injuries were caused by the negligence of the owner, his agents or servants?

## Reasons for Allowance of the Writ

The decision of the Court of Appeals in this case is in sharp conflict with the settled principle of the maritime law that, other than for maintenance and cure, a seaman who accidentally sustains personal injuries on board a vessel in navigable waters, regardless of the cause of the accident, whether from negligence or some other cause, is without a remedy against the owner of the vessel, unless such injuries are caused by unseaworthiness of the vessel or her appliances. (*The Osceola*, 189 U. S. 158, 175; *Chelentis* v. *Luckenbach S. S. Co.*,

247 U. S. 372, 380; *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255, 258; *Cortes* v. *Baltimore Insular Lines,* 287 U. S. 367, 370; *Warner* v. *Goltra,* 293 U. S. 155, 158.) In this case the Court of Appeals, although correctly declining to recognize that libelant's injuries had been caused by any unseaworthiness of the vessel or her appliances, nevertheless permitted a recovery of indemnity upon the ground that libelant's injuries had been caused by negligence for which petitioner was responsible, a ground utterly foreign to the maritime law as a basis for determining the rights and liabilities between a seaman and the owner of the vessel when the former has sustained personal injuries on board such owner's vessel.

It seems clear from the decisions of this Honorable Court, particularly from the recent decision in the case of *Seas Shipping Company* v. *Sieracki,* 328 U. S. 85, that the foregoing principle of the maritime law applies to all seamen alike, regardless of whether they are employed directly by the owner of the vessel on which the injury occurs or, as the libelant here was employed, by an independent contracting stevedore. Furthermore, it seems abundently clear that if the principle applies to a seaman employed by an independent contracting stevedore for the purpose of determining whether or not he is entitled to indemnity from the owner of the vessel for injuries allegedly caused by unseaworthiness, it likewise applies in determining whether or not he is entitled to indemnity from the owner for such injuries allegedly caused by the negligence of the owner, his agents, or servants. The fact that in the one situation (unseaworthiness) he is entitled to maintenance and cure plus indemnity while in the other (negligence) he is entitled to maintenance and cure and no indemnity, in no way makes the principle less applicable in the one situation than in the other.

Furthermore, the relationship of shipowner and seaman, where the latter is on board the owner's vessel as his business invitee, has certain peculiarities which have given to the seaman a somewhat different degree of protection than that which is given to other classes of business invitees of such owner. In some particulars the protection is greater; in others, less. Whenever the relation of shipowner and seaman exists it seems clear that the rights and liabilities of the parties, with respect to personal injuries sustained by the seaman, are to be determined by the law applicable to that relationship and not upon the basis of any relationship existing between the seaman and anyone else. The Court of Appeals in this case, contrary to the holding in the *Seas Shipping Company* case, based its decision not upon the relation of shipowner and seaman, which existed between petitioner and libelant in this case, but rather upon the relation between shipowner and a business invitee other than a seaman.

Clearly the libelant in this case is not entitled to obtain indemnity for his injuries upon the basis that they had been caused by negligence for which petitioner was responsible. Beyond maintenance and cure, libelant has no remedy against petitioner. If so, then the Court of Appeals fell into serious error in this case, an error which, if permitted to stand without correction, will not only result in a grave injustice in this case, but, as a precedent, will result in injustices in many other cases.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Second Circuit commanding that Court to send to this Honorable Court for its review and determination the full and complete transcript

of the Record and all proceedings in this case, so that said final decree of said Court of Appeals in this case may be reversed by this Honorable Court or that your petitioner may have such other, further and different relief in the premises as to this Honorable Court may seem meet and just.

THE PENNSYLVANIA RAILROAD COMPANY, *Petitioner*,

By

MARION H. FISHER,

*Counsel for Petitioner.*

# Supreme Court of the United States

OCTOBER TERM, 1948

ANTONIO CORRADO,
*Libelant-Appellee,*

*—against—*

PENNSYLVANIA RAILROAD COMPANY,
*Respondent-Appellant.*

## BRIEF OF PETITIONER IN SUPPORT OF ITS APPLICATION FOR A WRIT OF CERTIORARI

### Statement

The action herein is a libel in personam and was brought in admiralty in the United States District Court, Eastern District of New York, by the libelant to recover a sum of money from petitioner to indemnify libelant for personal injuries allegedly sustained by libelant when he was accidentally struck by the door of a freight car while libelant was on board a car float engaged in unloading the float of cargo as she was in navigable waters of the Hudson River, moored to Pier 29, near the foot of Desbrosses Street, New York, New York (R. 2-6). The action was tried in said District Court and upon the completion of the trial a decree was entered in the action in favor of libelant and against petitioner in the sum of $18,817.75 (R. 81).

Thereafter, the case was appealed by petitioner to the United States Court of Appeals for the Second Circuit where the aforesaid decree was affirmed (R. 95).

## Facts

On the morning of September 5, 1946, petitioner caused one of its barges or car floats, loaded with freight cars, to be moved across the Hudson River from the New Jersey side to the New York side by means of one of its tugboats. The vessel, when it arrived on the New York side of the river, was moored on the north side of Pier 29. Most of the freight cars aboard the vessel were loaded with freight which was to be moved therefrom while the cars themselves remained on the vessel (R. 28). There were two sets of tracks on the vessel, one set on the starboard side and the other on the portside. There were five cars on each set of tracks or, altogether, ten cars on board (R. 34). Sometime during the morning after the mooring had been made, the petitioner for the purpose of having the cars unloaded surrendered possession of them to the Penn Stevedoring Company, all pursuant to a contract previously entered into between petitioner and said Penn Stevedoring Company (R. 28). All that petitioner did with respect to the unloading operations was to indicate to the stevedoring company the cars that were to be unloaded (R. 29). The petitioner in no way participated in the work.

The libelant was employed by the Penn Stevedoring Company and, on the morning of September 5, 1946, about 8 o'clock, he began his work on Pier 29. At 10 o'clock he was directed by his boss to go aboard the

aforesaid vessel to unload freight from one of the cars aboard (R. 33). There were three or four fellow-workers with him (R. 34). The particular car to be unloaded was located on the offshore end of the vessel and it was the last car on that end (R. 34). Someone opened the door of the car on the platform side and libelant began to unload the freight consisting mainly of boxes of fruit (R. 35). Petitioner had worked there about an hour (R. 35) when someone asked him to open the car door on the offshore side (R. 36). Prior thereto libelant had observed light coming through at the top of that door (R. 43). When libelant went around the freight car on the outside to open the door and as he was in the act of breaking the seal on the lock, he noticed that the top of the door in part extended outwards about an inch from the side of the car (R. 37). When he had broken the seal and removed the bolt from the lock, he placed his hands on the handle located in the middle of the door and pulled the door (R. 37). When he had pulled the door about two inches, the door fell outwards from the top and struck him causing him to fall into the river (R. 38). After being submerged for sometime, he managed to grasp a line which had been thrown to him by his fellow-workers, after which he was removed from the water (R. 38).

The libelant, at the time of the accident, was approximately 65 years of age (R. 31). He had worked as a stevedore for some 13 or 14 years (R. 39). After the accident, he received medical treatment in various hospitals. From the time of the accident to the time of the trial he had earned no money (R. 42). He received Workmen's Compensation for about 14 months, after which the payments were stopped (R. 42). Examination a short time after the accident disclosed a frac-

ture of the 12th dorsal vertebra. Shortly after the accident, libelant also suffered an attack of pneumonia (R. 45).

Robert Green, libelant's foreman, was called by petitioner. He testified that he had known libelant for about 12 years (R. 60). He said he was present at the time the freight car was being unloaded and that he had observed that the door, which later fell upon libelant, was partially unfastened at the top and the only thing holding it to the side of the car was the hasp on the door with the seals in it (R. 62). He said he told the men working in the car, among whom was the libelant, not to open the door (R. 63). The libelant, however, said no one had given him any order not to open the door.

## Specification of Error

It was error on the part of the United States Court of Appeals to affirm the decree of the District Court in this case upon the ground that libelant could lawfully seek and obtain a decree of indemnity in his favor upon the ground that his injuries had been caused by negligence for which petitioner was responsible.

## POINT I

**The decree in this case is erroneous because, under the circumstances shown to exist, libelant had no lawful right to seek, much less obtain, a decree in his favor.**

It has been, apart from statutory enactments, a settled principle of maritime law for a long time that for personal injuries sustained aboard a vessel (any watercraft used as a means of transportation, as defined, 1 U. S. C., Sec. 3) in navigable waters of the United States by reason of negligence, involving no unseaworthiness of either the vessel or her appliances, a seaman is without a remedy against the owner for indemnity beyond maintenance and cure. Thus, in *Warner* v. *Goltra*, 293 U. S. 155, 158, it was said:

> "Congress knew that men employed upon a ship were without a remedy for negligence beyond their cure and maintenance, unless the injury was a consequence of unseaworthiness of the ship or a defect in her equipment."

Likewise, in this regard, in *Pacific Co.* v. *Peterson*, 278 U. S. 130, 134, it was said:

> "By the general maritime law of the United States prior to the Merchant Marine Act, a vessel and her owner were liable, in case a seaman fell sick, or was wounded in the service of the ship, to the extent of his maintenance and cure, whether the injuries were received by negligence

> or accident, and of his wages, at least so long as the voyage was continued, and were liable to an indemnity for injuries received by a seaman in consequence of the unseaworthiness of the ship and her appliances; but a seaman was not allowed to recover an indemnity for injuries sustained through the negligence of the master or any member of the crew. *The Osceola,* 189 U. S. 158, 175; *Chelentis* v. *Luckenbach S. S. Co.,* 247 U. S. 372, 380; *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255, 258."

To the same effect in *Cortes* v. *Baltimore Insular Lines,* 287 U. S. 367, 370, it was said:

> "By the maritime law a seaman is without a remedy against the ship or her owners for injuries to his person, with two exceptions only. A remedy is his if the injury has been suffered as a consequence of the unseaworthiness of the ship or a defect in her equipment. • • • A remedy is his also if the injury has been suffered through breach of the duty to provide him with 'maintenance and cure'."

Whatever may have been the rule with respect to the applicability of the foregoing principles of maritime law to the relationship between a shipowner and the employees of an independent contracting stevedore prior to the decision of the case of *Seas Shipping Company* v. *Sieracki,* 328 U. S. 85, it seems abundantly clear they now apply to that relationship, so that, for personal injuries accidentally sustained by such an employee on board a vessel afloat in navigable waters in the performance of his customary work of loading or unloading cargo, no cause of action for indemnity arises

in his favor against the owner of the vessel, unless the injuries were at least partly caused by unseaworthiness of the vessel or by a defect in her appliances. For, as said in the *Seas Shipping Company* case:

> "It seems, therefore, that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the shipowner or a stevedoring contractor should not determine the measure of his rights."

In the *Seas Shipping Company* case it was also held that because the libelant there was performing the work of a stevedore, traditionally the work of seamen employed by the owner, the rights of the libelant on the one hand and the obligations of the owner on the other were to be measured, at least so far as practicable, by the maritime law applicable to the relation of owner and seaman, rather than upon the basis of any other relationship. That relation, with respect to the condition and use of a vessel under the maritime law, like the relation of master and servant with respect to the condition and use of land under the common law, has certain peculiarities which have given to seamen a somewhat different degree of protection than that which is given to other classes of business invitees. In some particulars the protection is greater; in others, less. (See comment g, Sec. 332, Vol. II, *Restatement of the Law, Torts*). While a seaman in such a relation is undoubtedly a business invitee of the owner of the vessel, the same as servant in performing work upon his master's land is a business invitee of the master, yet that circumstance, however, no more entitles a seaman to have his rights with respect

to the owner of the vessel measured by the maritime law applicable to business invitees of such owner of another class than it entitles a servant at common law to have his rights as to his master adjudged upon the law applicable to the master's business invitees of another class.

The Court of Appeals in its decision in this case (R. 94) indicated that, even though libelant under the decision in the *Seas Shipping Company* case was to be considered a business invitee within the same class as seamen employed directly by petitioner, he was nevertheless privileged to maintain his action as a business invitee of another class. In other words, in that situation, even if it could possibly exist, his contractual relationship with his employer, the contracting stevedore, would be a factor in the case, something which was expressly declared in the *Seas Shipping Company* case (Opinion, p. 97) to be a fortuitous circumstance which should not determine the measure of his rights. Clearly libelant's rights are to be measured solely by those accorded to a seaman, because he was "doing a seaman's work and incurring a seaman's hazards" (Opinion, p. 99, *Seas Shipping Company* case).

Furthermore, the Court of Appeals (R. 94) in its decision declared:

> "That it is most improbable that the Supreme Court, in adding to the stevedore's remedies those open to ordinary seamen, intended to deprive them of other pre-existing remedies."

Such a declaration, it is respectfully submitted, begs the question. The point in *Seas Shipping Company* case in respect to the stevedore's remedies was not a matter of either increasing or diminishing them, but simply

a matter of ascertaining and defining them. The fact that stevedores in prior suits may have either won or lost their cases upon the erroneous theory that they were not seamen appears much beside the point. As the law now stands, it clearly appears that stevedores on board a vessel in navigable waters in the performance of their work as such, are seamen and that their rights and remedies as to the owner of the vessel are to be measured solely upon that basis.

The Court of Appeals in its decision (R. 94) indicated that libelant could lawfully seek and obtain indemnity in this case because Congress in the enactment of the Longshoremen's and Harbor Workers' Act, 44 Stat. 1440, 33 U. S. C., Sec. 933 (a), had preserved the stevedore's rights and remedies against third persons responsible for his injuries. That Act, it is respectfully submitted, neither added to nor detracted from the remedies of a stevedore with respect to third persons. Whatever those remedies were at the time that Act took effect, or whatever they have since been determined to be, makes no difference so far as libelant is concerned.

## *CONCLUSION*

**The Writ should be granted.**

Respectfully submitted,

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# Supreme Court of the United States

October Term, 1948.

ANTONIO CORRADO,
*Libelant-Appellee,*

AGAINST

PENNSYLVANIA RAILROAD COMPANY,
*Respondent-Appellant.*

**Memorandum of Libelant-Appellee in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.**

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# Supreme Court of the United States

OCTOBER TERM, 1948.

ANTONIO CORRADO,
*Libelant-Appellee,*

AGAINST

PENNSYLVANIA RAILROAD COMPANY,
*Respondent-Appellant.*

**Memorandum of Libelant-Appellee in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.**

---

**Statement.**

*To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:*

The petitioner herein makes application to this Court for a Writ of Certiorari, the object of which is to review the final decree entered in the above entitled matter in the office of the Clerk of the United States District Court for the Eastern District of New York on May 21, 1948, and affirmed by the United States Court of Appeals, Second Circuit, November 29, 1948.

The action was brought to recover full indemnity by the libelant-appellee herein, a longshoreman who was injured in the course of his employment on the 6th day of September 1946, while engaged at work on a car-float afloat in New York Harbor.

An appeal was originally taken from the decree of the District Court to the United States Court of Appeals for the Second Circuit, which Court on the 29th day of November, 1948, affirmed the decree of the District Court made and entered as aforesaid (Hon. Augustus N. Hand writing opinion for the Court).

## Facts.

The libelant-appellee, aged 64 years at the time of the accident out of which this controversy arises, had been in the employment of the Penn Stevedoring Co. for upwards of 14 years as a longshoreman (91 and 96).* This company regularly performed the stevedoring work for the Pennsylvania Railroad Company pursuant to contract (86).

At about 10:00 A. M. on September 6, 1946, the day of the accident, he and his fellow-workmen were ordered by their foreman to go to door No. 12 on Pier No. 29, North River, where carfloat No. 511 was moored, to assist in discharging the cars upon said float, of their merchandise, consisting of boxes of fruit and vegetables (90-102). They started to unload a New York Central freight car, located on the off shore side of the float, at the water end thereof. There were ten cars on the float—5 on the port side and 5 on the starboard side, there being a platform in the center separating the two rows of cars, to which platform the merchandise within the cars was being discharged and from thence trucked to the pier (100-102).

The pier superintendent or agent for the respondent-appellant had general supervision of the work performed by the stevedoring company, directing the stevedore to dischargo cargo from such cars as were designated by him (85).

The carfloat was brought over from the Jersey City terminus by Pennsylvania tug earlier in the A. M. and was

*Numerals in parentheses refer to folios of Record unless otherwise stated.

moored at Pier No. 29, North River (83), and after the float was brought to said pier by the Pennsylvania tug, the superintendent at the pier, in the employment of the respondent, directed the Penn Stevedoring Co. as to the location of the cars that were to be discharged of their contents (85). The foreman stevedore had nothing to do with the inspection of the cars on the float. This is done by the railroad inspectors when the cars are put on the float in Jersey City (205, 206).

The libelant did not open the door but two or three longshoremen opened the door on the platform side of the car in the presence of foreman stevedore Robert Green, who was respondent's witness (179-215). The foreman testified that he saw the defective door on the opposite side of the car and the possibility of harm arising therefrom in the event that an attempt was made to open it as soon as the door was opened (185-186; 201-202). Libelant testified that he did not assist in opening the door and that he did not know who opened the door (102) and denied that he had been warned (108 and 109).

The Court in its opinion says:

> "I do not believe that the foreman warned the libelant not to open the door" (226).

It is the custom and practice for the railroad inspector to mark doors if defective, as a warning to the stevedores, that something is wrong with the door and to avoid the same (116, 117 and 212).

There was no warning or notice on the door that fell (117).

It was customary for the men discharging the cars to open the doors whenever it became necessary, for light and air, and it was pretty hot in the freight car just before the accident happened (107, 213 and 214).

Libelant testified that the merchandise on the inside of the car was about six feet high or half way to the ceiling (104); that after a passageway was cleared from the platform door to the offshore door, he was asked by one of his fellow-workmen to open the offshore door (107); that he walked along the side of the car on the offshore side thereof up to the door, broke the seal and started to open the door and after moving it two or three inches, slowly the door came off, knocking him into the water (108-113); *that nobody at any time gave him any order or direction not to open the door* (108). Libelant testified that when he started to open the door he noticed that the rollers on the top of the door were missing although they were present at the bottom of the door (116).

That when he fell into the water, he was submerged and when he came up, he was underneath the door of the float; that he went down three times before he succeeded in grasping a line that had been thrown to his assistance (113, 114).

**Opinion and Decision of the District Court on the Foregoing Facts.**

(See fols. 217 to 240.)

The liability of the respondent-appellant for full indemnity as found by the Court is predicated upon three grounds (Opinion of the Court, 217 to 288, inc.) and Findings of Fact (230 to 236, inc.):

First: Upon the grounds that the respondent-appellant owed the libelant-appellee as an invitee or "business visitor" the non-delegable duty of seeing to it that the place wherein libelant-appellee was to work was reasonably safe at the time it was turned over to the stevedore, which duty respondent failed, as a matter of fact, to perform:

*Grasso* v. *Lorentzen,* 169 Fed. (2d) 27-29, cer. denied 326 U. S. 743;
*Lauro* v. *U. S. A.,* 162 Fed. (2d) 32-34.

SECOND: Upon the ground that the defective door constituted "unseaworthiness" of the vessel, which was the proximate cause of the libelant's injuries.

*Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85.

THIRD: That the libelant was free from contributory negligence.

**Questions Involved.**

The ownership, operation and control of the car-float involved in the controversy is undisputed (219).

The libelant's employment by the Penn Stevedoring Co. and his presence as an invitee of the respondent herein is likewise undisputed.

The happening of the accident and the circumstances surrounding the same are likewise undisputed. The only contested questions before the Court were the alleged negligence of the respondent, the unseaworthiness of the vessel, and the freedom from contributory negligence on the part of the libelant, all of which questions were determined by the Court in favor of the libelant (Opinion of Matthew T. Abruzzo, *D. J.,* 217-228 inc. and the Findings of Fact and Conclusions of Law, 229-240, inc.).

**The Decision of the United States Court of Appeals.**

It will be noted that the United States Court of Appeals in affirming the decision of the District Court did not pass upon the question of the unseaworthiness of the car-float by reason of the defective box car door. Judge Hand, writing for the Court, says:

"It is unnecessary to decide whether a defect in one of the cars loaded on the float constituted unseaworthiness of the vessel. It may be argued that the car was only part of the cargo rather than a part of the equipment of the ship and that the defect was therefore not a basis for a finding of unseaworthiness. On the other hand, it may be argued that the defective car-door was analogous to the leaky tank which was considered by this court in *The G. R. Grove,* 294 Fed. 506, sufficient to render the vessel unseaworthy with respect to other cargo. Liability of the owner of the vessel to the libellant seems to be more appropriately rested upon negligence toward a business visitor than upon a doubtful extension of the doctrine of unseaworthiness to defects in the cargo or in a container of the latter. There is sufficient basis for liability because of failure to warn the libellant of a danger without invoking a theory of liability for personal injuries due to a species of unseaworthiness for which we are referred to no definite authority."

**Instant Application.**

In seeking a Writ of Certiorari, the respondent-appellant predicates its right thereto solely upon the grounds that the Court below erred in holding that a stevedore, who has accidently sustained personal injuries on board a vessel in navigable waters in the performance of his work, under circumstances involving no unseaworthiness of the vessel or her appliances, cannot lawfully obtain indemnity from the owner of the vessel upon the grounds that such negligence was caused by the owner or his agent, or servant (Petition for Writ, p. 4).

It will be noted that although the contention of the libelant-appellee that he was entitled to full indemnity

upon the grounds of (1) negligence, (2) unseaworthiness of the vessel (3) his freedom from contributory negligence, the United States Court of Appeals affirmed the District Court with respect to negligence and freedom from contributory negligence, but expressly eliminated from its decision the Findings of the District Court with respect to the unseaworthiness of the vessel.

The respondent-appellant contends that, no liability can be predicated upon the theory of negligence, and libelant-appellee, having failed to establish liability upon the theory of unseaworthiness of the vessel, the instant application is meritorious, and points out in support of its argument, that this Honorable Court intended by its decision in the case of *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, to deprive an injured longshoreman of any right to recover indemnity on the theory of negligence.

It will be noted that in the opinion of the United States Court of Appeals, this theory is untenable, viz.:

> "We cannot justify respondent's claim based on the decision in *Sea Shipping Co.* v. *Sieracki*, 328 U. S. 85, holding that a stevedore should be classed as a seaman and awarded full indemnity against the owner of his vessel if she was unseaworthy. That decision in no way precludes a stevedore from recovering damages suffered as a business invitee which were occasioned by the negligence of the ship- [fol. 96] owner. It is most improbable that the Supreme Court, in adding to the stevedore's remedies those open to ordinary seamen, intended to deprive them of other pre-existing remedies. The following language of Mr. Justice Rutledge's opinion (p. 101) in the latter case tends to show that such a remedy as is here invoked may still be pursued by a stevedore: 'Congress by [the Longshore-

men's and Harbor Workers'] Act not only did not purport to make the stevedore's remedy for compensation against his employer exclusive of remedies against others. It expressly reserved to the stevedore a right of election to proceed against third persons responsible for his injury * * *'

For the foregoing reasons the judgment is affirmed."

## POINT I.

**The decree in this case as affirmed by the United States Court of Appeals, Second Circuit, is sustained by the authorities in this court, as well as the numerous authorities throughout the country, and it is not affected by the ruling in the case of Seas Shipping Co. v. Sieracki, 328 U. S. 85.**

It has always been the law that a longshoreman injured on a ship in the performance of his duties, is an invitee or a "business visitor", as to whom the owner owed the duty of reasonable care.

Restatement of the Law of Torts, Vol. II, 343;
Am. Jur., Vol. 48, Sec. 541, page 368;
*Puleo* v. *Moss & Co.,* 159 Fed. 2nd 842, 845, 291 U. S. 589;
*Anderson* v. *Lorentzen,* 160 Fed. 2nd 173;
*Grasso* v. *Lorentzen,* 169 Fed. 2nd 27-29; Cer. denied 326 U. S. 743;
*Lauro* v. *U. S.* 162 Fed. 2nd 32-34;
*Warner* v. *Goltra,* 293 U. S. 155;
*Deluca* v. *Shepard S.S. Co.,* 65 F. (2) 566, Cer. denied 291 U. S. 85.

Further citations would be abortive, as they all support this proposition. It is urged by the petitioner, however,

that since the final decree in *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, was sustained on the ground that the libelant was a "seaman", then by a process of elimination, a recovery by a longshoreman of indemnity against a third party, to wit, the ship owner, could only be sustained on the ground of the alleged unseaworthiness of the vessel. In other words, that his Common Law remedies were wiped out by the *Sieracki* decision.

There is not the slightest intimation in the text of the opinion in the *Sieracki* case, that the U. S. Supreme Court intended by its decision to limit a recovery by a longshoreman for damages for personal injuries to a case where unseaworthiness is established.

The decision enlarged the rights of the injured longshoreman rather than curtailed them. It clearly was not the intention of the U. S. Supreme Court to limit them to a recovery solely on the grounds of unseaworthiness, which are very few compared with claims predicated upon the theory of negligence with respect to a "business visitor".

In the *Sieracki* case, there was no claim of negligence as a ground for recovery, and the only question before the Court was whether libelant, a longshoreman, could recover on the grounds of unseaworthiness, and it was held that he could. The Court did not have before it the question whether he could recover on the grounds of negligence towards a "business visitor", and therefore no reference is made one way or the other to this in the Court's decision.

The respondent argues that although a longshoreman is a "business visitor" and entitled, as has always been held, to recover against a third party on the plea of negligence, the decision in the *Sieracki* case, intentionally or otherwise, deprives him of this remedy. In other words, that a longshoreman who cannot establish that his injuries were

due to unseaworthiness, is entitled to no recovery against a third party howsoever negligent that third party may have been in the premises. This is unbelievable and most unjust.

The U. S. Court of Appeals says in its opinion, that the decision (in the *Sieracki* case) in no way precludes the stevedore from recovering damages suffered as a "business visitor" which were caused by the negligence of the ship owner—fol. 96. "It is most improbable that the U. S. Supreme Court, in adding to the stevedore's remedies, open to ordinary seamen, intended to deprive them of other pre-existing remedies", citing Justice Rutledge's opinion in the *Sieracki* case.

Under the theory of unseaworthiness of the vessel, the decision enlarged the rights of the longshoreman rather than limited them to the theory of unseaworthiness, which are very few generally speaking, compared with those where recovery is sought on the grounds of negligence. In the *Sieracki* case, the only question before the Court, was the question whether the evidence established the right to recover on the basis of unseaworthiness, which the Court answered in the affirmative. There was never any claim asserted by the libelant on the theory of negligence and therefore there was no question before the Court as to the right of the libelant to recover on that theory.

## POINT II.

**Even assuming that libelant can only recover full indemnity on the ground of the unseaworthiness of the vessel, the court below held that libelant was entitled to recover on both theories, and such finding was not in any way affected by the decision of the Court of Appeals, for the reason that the court has affirmed the decree on the theory of negligence, expressly refraining from consideration of the question of unseaworthiness.**

## CONCLUSION.

**The Petition for Writ of Certiorari Should Be Denied.**

Respectfully submitted,

By .....
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